

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

FRANK ALAIN BAZADIER,

Plaintiff,

ANSWER

-against-

Jury Trial Demanded

JOHN J. McALARY, et. al.

09-CV-00990

Defendants.

(GLS/RFT)

Defendants John J. McAlary, Chief Judge Jonathan Lippman, Judge Carmen Beauchamp Ciparick, Judge Victoria A. Graffeo s/h/a Vicoria A. Graffeo, Judge Robert S. Smith, Judge Theodore T. Jones, Judge Susan P. Read and Judge Eugene F. Pigott, Jr., by their attorney, Andrew M. Cuomo, Attorney General of the State of New York, David L. Cochran, Assistant Attorney General, of counsel, answers the complaint as follows:

1. The Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 4, 5, 6, 9, 10 (but specifically deny that portion of paragraph 10 that there is “discriminatory exclusion” in the referenced Rule) , 11, 12 and 13 of the complaint.

2. The Defendants deny the allegations contained in paragraphs 2, 3, 14, 15, 16 and 17 of the complaint.

3. The Defendants admit the allegations contained in paragraphs 7 and 8 of the complaint only to the extent that the defendant John J. McAlary is the Executive Director of the New York State Board of Law Examiners and that defendants Chief Judge Jonathan Lippman, Judge Carmen Beauchamp Ciparick, Judge Victoria A. Graffeo s/h/a Vicoria A. Graffeo, Judge

Robert S. Smith, Judge Theodore T. Jones, Judge Susan P. Read and Judge Eugene F. Pigott, Jr. are Judges of the State of New York Court of Appeals and refer to the applicable statutes and regulations for a statement of defendant McAlary's duties and responsibilities and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraphs 7 and 8 of the complaint.

4. Deny any allegation of the complaint not specifically responded to above.

Defenses

5. The complaint fails to state a claim upon which relief can be granted.

6. At all relevant times the Defendants John J. McAlary, Chief Judge Jonathan Lippman, Judge Carmen Beauchamp Ciparick, Judge Victoria A. Graffeo s/h/a Vicoria A. Graffeo, Judge Robert S. Smith, Judge Theodore T. Jones, Judge Susan P. Read and Judge Eugene F. Pigott, Jr. acted under the reasonable belief that their conduct was in accordance with clearly established law. The defendants are, therefore, protected under the doctrine of qualified immunity.

7. The complaint is barred, at least in part, under principles of res judicata and collateral estoppel.

8. To the extent plaintiff raises state law claims, they are barred by the Eleventh Amendment, and by other state law.

9. The complaint is barred, in whole or in part, by the applicable statute of limitations.

10. The complaint is barred, in whole or in part, under the Eleventh Amendment.

11. The Defendants John J. McAlary, Chief Judge Jonathan Lippman, Judge Carmen Beauchamp Ciparick, Judge Victoria A. Graffeo s/h/a Vicoria A. Graffeo, Judge Robert S. Smith, Judge Theodore T. Jones, Judge Susan P. Read and Judge Eugene F. Pigott, Jr. were not personally

involved in the alleged constitutional or statutory violations, and defendants are therefore not liable under 42 U.S.C. § 1983. The doctrine of respondeat superior does not apply in civil rights cases, and the complaint should therefore be dismissed.

12. The Defendants John J. McAlary, Chief Judge Jonathan Lippman, Judge Carmen Beauchamp Ciparick, Judge Victoria A. Graffeo s/h/a Victoria A. Graffeo, Judge Robert S. Smith, Judge Theodore T. Jones, Judge Susan P. Read and Judge Eugene F. Pigott, Jr. hereby request a trial by jury to the extent so triable.

WHEREFORE, Defendants John J. McAlary, Chief Judge Jonathan Lippman, Judge Carmen Beauchamp Ciparick, Judge Victoria A. Graffeo s/h/a Victoria A. Graffeo, Judge Robert S. Smith, Judge Theodore T. Jones, Judge Susan P. Read and Judge Eugene F. Pigott, Jr. respectfully request that this Court deny the relief requested, dismiss the complaint, and grant such other relief as to the Court shall seem is just and equitable.

Dated: Albany, New York
December 14, 2009

ANDREW M. CUOMO

Attorney General of the State of New York

Attorney for defendants John J. McAlary, Chief
Judge Jonathan Lippman, Judge Carmen
Beauchamp Ciparick, Judge Victoria A.
Grafteo s/h/a Victoria A. Grafteo, Judge
Robert S. Smith, Judge Theodore T. Jones,
Judge Susan P. Read and Judge Eugene F.
Pigott, Jr.

The Capitol

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